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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[redacted]

File: LIN-01-169-52455 Office: Nebraska Service Center Date: SEP 15 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER: [redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4) in order to employ him as an associate pastor.

The director denied the petition finding that the beneficiary's claimed volunteer work with the petitioning church was insufficient to satisfy the requirement that he had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition and that the petitioner had failed to establish that the beneficiary had the requisite two years of membership in the petitioner's denomination.

On appeal, counsel for the petitioner submitted a written statement rebutting the director's findings.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter is a Lutheran church. It did not provide a description of the size of its congregation. The beneficiary is a native and citizen of India who was last admitted to the United States on September 8, 2000, as a B-2 visitor.

The first issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary had had the requisite two years of continuous experience in a religious occupation.

Regulations at 8 C.F.R. § 204.5(m)(1) state, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on May 2, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least May 2, 1999.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding filing. The regulations are silent on the question of volunteer work satisfying the requirement. The pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. The regulation defines lay religious occupations, in contrast, in general terms as an activity related to a "traditional religious function." *Id.* Such lay persons are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. See 8 C.F.R.

204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Bureau interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify as well.

Furthermore, in evaluating a claim of prior work experience, the Bureau must distinguish between common participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. It is not reasonable to assume that the petitioning religious organization, or any employer, could place the same responsibilities, the same control of time, and the same delegation of duties on an unpaid volunteer as it could on a salaried employee. Nor is there any means for the Bureau to verify a claim of past "volunteer work" similar to verifying a claim of past employment. For all these reasons, the Bureau holds that lay persons who perform volunteer activities, especially while also engaged in a secular occupation, are not engaged in a religious occupation and that the voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

In this case, the petitioner stated that the beneficiary had been employed by it as a volunteer "clerical minister" since September 2000. The petitioner submitted other evidence indicating that from January 1996 to September 2000, the beneficiary served as national director for the Methodist Revival Ministries in India and other evidence that the beneficiary served as chairman for evangelism and missions for the Centenary Methodist Telugu Church in Hyderabad, India. The director found this claimed employment insufficient to satisfy the two-year prior experience requirement.

On appeal, counsel argued that the beneficiary may not be disqualified simply because his work has been voluntary. Counsel further stated that to have paid the beneficiary would have violated his visa status.

Counsel's argument is not persuasive. In order to establish that the beneficiary was "continuously carrying on a religious occupation," the above discussion noted that it must be full-time permanent employment. Voluntary, part-time or intermittent employment does not satisfy the requirement. The record does not demonstrate that the beneficiary was continuously employed by the church in a full-time capacity or that he engaged in such work as his occupation.

Furthermore, the petitioner provided no detailed description of the beneficiary's actual duties as clerical minister, nor has it provided any evidence of the beneficiary's means of financial support in this country. Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating documentation such as tax documents, the Bureau is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

The second issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary was a member of the petitioner's religious denomination for the same two-year period.

8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

> *Religious denomination* means a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination. For the purposes of this definition, an inter-denominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

In response to a Bureau request for additional evidence, the petitioner submitted a letter dated January 28, 2002, which stated, in pertinent part, that:

> [The beneficiary] serves in his community for the promotion of the Christian values through the [redacted] here in Michigan. He is the creator of various gospel ministries through [redacted] in the rural districts of Andhra Pradesh, India.
>
> He and his wife are Co-members of our [redacted] faith [redacted] as well as other local churches.

The petitioner has not explained how the beneficiary managed to perform evangelical work for [redacted] while purportedly from January 1996 to September 2000, the beneficiary served as national director for Methodist Revival Ministries in India and from September 2000 to the filing of the petition the beneficiary was clerical minister at the Living Word Lutheran Church in the United States. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such

inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, counsel for the petitioner states that the Lutheran and Methodist churches are both Protestant Christian churches which share the same theological foundation. This argument is not persuasive. The term "Protestant" is a broad term referring to various denominations descending from those that broke away from the Church of Rome during the Reformation. CIS does not accept or apply a sweeping application of the term "religious denomination." In view of the beneficiary's involvement with various denominations during the qualifying period, the petitioner has failed to demonstrate that the two-year denominational membership requirement has been met.

Beyond the decision of the director, the petitioner has not demonstrated its ability to pay the proffered wage.

Regulations at 8 C.F.R. § 204.5(g)(2) state, in pertinent part, that:

> Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.